

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE
CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 05/19/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JUAN RAMIREZ,) No. 1 CA-IC 10-0056
)
Petitioner Employee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
)
THE INDUSTRIAL COMMISSION OF ARIZONA,) (Not for Publication -
) Rule 28, Arizona Rules
Respondent,) of Civil Appellate
) Procedure)
FIRST TRANSIT,)
)
Respondent Employer,)
)
NEW HAMPSHIRE INSURANCE COMPANY)
BROADSPIRE,)
)
Respondent Carrier.)

Special Action - Industrial Commission

ICA Claim No. 20092-950632

Carrier Claim No. 152-12939

Administrative Law Judge Stephen W. Pogson

AFFIRMED

Juan Ramirez
Petitioner Employee

Phoenix

Zingg Law Office, PLLC
By Jo Fox Zingg
Attorneys for Respondents Employer and Carrier

Tucson

O R O Z C O, Judge

¶1 This is a special action appeal of an Industrial Commission of Arizona (ICA) decision upon review (the ICA Review), which affirmed the ICA decision upon hearing (the ICA Decision), wherein the Petitioner's, Juan Ramirez, claim for benefits was denied. Ramirez argues on appeal that the evidence does not support the ICA Decision. Because we find the Administrative Law Judge's (ALJ) findings to be supported by the evidence of record, we affirm.

JURISDICTION AND STANDARD OF REVIEW

¶2 This Court has jurisdiction pursuant to Arizona Revised Statutes sections 12-120.21.A.2. (2003), 23-951.A. (1995), and Arizona Rule of Procedure for Special Actions 10. In reviewing ICA decisions, we defer to the ALJ's factual findings, but review questions of law de novo. *Young v. Indus. Comm'n of Ariz.*, 204 Ariz. 267, 270, ¶ 14, 63 P.3d 298, 301 (App. 2003). We consider the evidence in a light most favorable to upholding the ALJ's decision. *Lovitch v. Indus. Comm'n of Ariz.*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002).

PROCEDURAL AND FACTUAL HISTORY

¶3 In September 2009, Ramirez was a bus driver employed by First Transit. While driving his bus, Ramirez was involved in a collision that caused damage to several vehicles. At the time of the accident, Ramirez was not on duty; however, he was driving his bus back to the bus yard.

¶14 First Transit conducted an investigation regarding the accident, determined that it was "preventable," and consequently terminated Ramirez's employment on October 19, 2009. On the same day as his termination, Ramirez filed notice with First Transit that he had been injured in connection with the September collision.

¶15 A hearing before an ALJ on the matter of Ramirez's ICA claim for benefits was conducted in April 2010. First Transit argued that Ramirez failed to timely report an injury. Ramirez testified that he notified First Transit of his injury the day after the accident. A safety manager at First Transit testified that on the day of the collision, and again on the day after, Ramirez indicated that he was uninjured. Ramirez also testified that he did not speak with police at the scene of the accident. An Arizona Department of Public Safety (DPS) report authored on the date of the collision states that Ramirez "reported and showed no signs of injuries." The ALJ found that Ramirez failed to sustain his burden of proof and denied the claim. The ICA Review affirmed the ICA Decision and this appeal followed.

DISCUSSION

¶16 Ramirez argues that the ICA Decision is not supported by the evidence. Specifically, Ramirez raises several points of evidence that are contrary to the ICA Decision: (1) Ramirez notified First Transit, prior to being terminated, that he sustained injury as a result of the accident; and (2) Ramirez,

after the accident, did not make statements to police at the scene that he was not injured.

¶17 "An appellate court will not weigh the evidence, but consider it in the light most favorable to sustaining the finding." *Salt River Project v. Indus. Comm'n of Ariz.*, 128 Ariz. 541, 544-45, 627 P.2d 692, 695-96 (1981). "Where a conflict in testimony exists, the Industrial Commission has the duty and responsibility to resolve such conflict and if the result reached by the Commission is substantiated by competent evidence, the Court of Appeals will not substitute its judgment for that of the Commission." *Preuss v. Indus. Comm'n of Ariz.*, 15 Ariz. App. 515, 516-17, 489 P.2d 1217, 1218-19 (1971). On review, "[i]t is presumed that the Commission consider[ed] all relevant evidence." *Perry v. Indus. Comm'n of Ariz.*, 112 Ariz. 397, 398, 542 P.2d 1096, 1097 (1975). "[T]he burden of proof is on the applicant to show affirmatively all of the essential elements necessary to sustain the award." *Preuss*, 15 Ariz. App. at 517, 489 P.2d at 1219.

¶18 In this case, the record shows that there is a conflict in the evidence regarding whether Ramirez timely notified First Transit of an injury, and whether Ramirez made statements to officers at the scene of the accident. Because it is the ALJ's duty to resolve such conflicts in the evidence and because the ICA Decision is supported by competent evidence; namely testimony from an ICA safety manager and a DPS report, the ICA Decision will not be disturbed on appeal.

CONCLUSION

¶19 For the foregoing reasons, we affirm the ICA Review, which affirmed the ICA Decision, denying Ramirez's claim for benefits.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

DONN KESSLER, Judge

/S/

MICHAEL J. BROWN, Judge